IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

No. 80-759

ALBERTO SANCHEZ, et al

Petitioners,

v.

TUCSON UNIFIED SCHOOL DISTRICT NO. 1, et al,; UNITED STATES OF AMERICA; MARIA MENDOZA, et al., SIDNEY L. SUTTON and SALLY SUTTON, et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

RESPONDENT TUCSON UNIFIED SCHOOL DISTRICT NO. 1'S APPENDIX

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RESPONDENT TUSD #1'S APPENDIX I

NOTICE OF PLAN HEARING HELD
AUGUST 8-9, 1980

(TUSD News, Vol. 21, No. 1,
Summer, 1978)

RESPONDENT TUSD #1'S APPENDIX II

DEFENDANTS' PLAN AND SUPPORTING MEMORANDUM

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

ROY and JOSIE FISHER, et al, Plaintiffs, vs. ANITA LOHR, et al, Defendants.	NO. CIV-74-90-TUC-WCF
MARIA MENDOZA, et al, Plaintiffs, vs. TUCSON SCHOOL DISTRICT NO. 1, et al, Defendants.	NO. CIV-74-204-TUC-WCF DEFENDANTS' PLAN AND SUPPORTING MEMORANDUM

In response to paragraphs 2 and 3 of the Court's June 5, 1978, Order, all Defendants except Anita Lohr submit herewith a plan responsive to the Court's findings. In submitting this desegregation plan, the Tucson Unified School District has been guided by the Court's Findings of Fact and Conclusions of law. In the hearing on July 12, 1978 the Court reiterated its admonition that the limited violations identified by the Court should be the subject of a limited remedy. The Court also specified that the remediation must be made in order that any effects of segregative actions be rectified completely and immediately.

The Court made twenty-two findings of fact with respect to the District's neighborhood school concept. These findings of fact vindicate, and

unquestionably recognize, a decisive relationship between that concept and the District's essentially "appropriate dismantlement" of its former dual system in 1951 (Findings of Fact and Conclusions of Law, p. 43, para. 20; p. 44, para. 30). The Court postulated that the neighborhood school concept may have been a necessary vehicle for dismantlement in the first instance, and for ensuring the non-existence of continuing effects of a formal dual system (pp. 44-45, para 30).

In responding to the Court's identification of Constitutional violations, it was clear that the nine named schools divided into three separate groups capable of discrete treatment: Brichta, Manzo and Tully; Roosevelt, University Heights, Jefferson Park and Cragin; and Spring and Safford Junior

Highs. The remedies to be submitted to the Court are also divisible into two separate categories: (1) the necessity to eliminate all vestiges of the past statutory segregation flowing from the existence of Dunbar (p. 222, para. 56); and, (2) the duty to remedy any present effects of past segregative acts. These present effects could be measured only by comparing what the racial or ethnic composition of a school would have been absent segregative acts. In summary, all vestiges of Dunbar and its branches must be eliminated, whereas the present effects of segregation must be remedied by a restoration of the racial or ethnic composition the school would have enjoyed absent the segregative act or acts.

In examining one of the areas designated by the Court for remediation -

- Brichta, Manzo and Tully - - the Court ruled that present effects of past discriminatory acts were being experienced at the three schools. The acts specifically identified by the Court were (1) the timing of Brichta's original construction, (2) the drawing of Brichta's original attendance boundaries, (3) the adding of four permanent classrooms to Brichta in 1964, and (4) placing portables at Brichta in 1972 rather than using space at Tully to relieve Brichta's overcrowding.

Brichta is presently an ethnically balanced school, when considered in terms of district-wide ratios. But this means Brichta has an Anglo majority in a geographical area of the District where the majority of students are Mexican-American. The Court suggested that

Brichta's ethnic composition would more nearly reflect its immediate geographic vicinity had the past discriminatory acts not occurred. As suggested by the Court, had the acts not occurred, Manzo and Tully would have enrolled more Anglo students. The integral Manzo and Tully neighborhoods possessed no constitutional taint, for the Court suggested only that students from outside these two immediate neighborhoods should have been assigned to Manzo and Tully in the past and not that the District caused the integral neighborhoods themselves to be predominantly Mexican-American.

In addition, both the Manzo and Tully neighborhoods meet the criteria established for neighborhood school attendance. That is, both schools are situated in the midst of a residential

area defined by major thoroughfares and natural barriers within which students are able to walk to school.

The plan the District submits to the Court addresses itself to these considerations. The Manzo and Tully neighborhoods are not altered in any way by boundary changes. Tully School adds that portion of the Brichta attendance area bounded by Ironwood Hills (Grant), Silverbell, Camino de Oeste, and Goret, and the Manzo school adds that portion of the Brichta attendance area bounded by Greasewood, Speedway, Trail's End, Camino de Oeste, and Ironwood Hills (Grant). Had Brichta students been assigned to manzo and Tully in the past, it is probable that such assignment would have taken this form, with more students assigned to Tully than Manzo because of space considerations.

This plan reduces Brichta to its immediate walk-in neighborhood plus Silverbell Terrace, a predominantly minority area. This also removes the portables from Brichta which were part of the constitutional violation. The students in the areas formerly designated as being assigned to Brichta are reassigned to both Tully and Manzo Schools, resulting in all three schools more closely approximating the student ethnic percentages in that geographic area of the District. All children currently walking to Brichta, Manzo, and Tully will continue to do so. Those children changing schools are already being transported; so additional student transportation is not required with only slightly increased distance for the transported youngsters to travel. This

plan will have the effect of assigning approximately 184 more Anglo children to Tully and approximately 54 more Anglo children to Manzo. The continuity of educational programs will not be affected and little staff assignment adjustment will be required. It is the District's position that the plan presented respecting these three schools meets the criteria established by the Court.

In the second school area, affecting Roosevelt, University Heights, Jefferson Park and Cragin, the Court identified Roosevelt and University Heights as vestiges of the former dual system. The Court found that the Black neighborhood which developed around Dunbar between 1912 and 1951 was a neighborhood created by state-mandated segregation. The Black population which surrounded Dunbar spread

from the immediate vicinity of Dunbar into the Roosevelt and University Heights attendance areas. The Black residential patterns in these two areas maintain a connection with Dunbar, making them vestiges which must be erased.

Jefferson Park and Cragin were identified by the Court because of the assignment and transportation to those schools of children living north of the Rillito. These children attended Davidson and Whitmore schools, but when these two schools became overcrowded, the foothills students were assigned to the nearest schools then possessing available space--Jefferson park and Cragin. However, when these two schools became overcrowded, the children north of the Rillito were not assigned to University Heights, the next nearest school with

available space. Further, these foothill students were not reassigned to Davidson and Whitmore when space later became available within them. The Court found that the present effects of this discriminatory behavior must be remediated.

That portion of the plan offered by the District with respect to Roosevelt and University Heights attempts to eliminate the vestiges of Dunbar within the framework of the neighborhood school policy. Both Roosevelt and University Heights are closed, eliminating the vestiges of Dunbar root and branch. The Roosevelt neighborhood has suffered in recent years from the encroachment of industry and Pima Community College, with the resultant fragmentation of the neighborhood area. The dispersal of the

Roosevelt children among three schools (Roskruge, Blenman and Cragin), all predominantly Anglo in enrollment, destroys completely any possibility that the Roosevelt vestige could continue to exist.

Although not producing sufficient numbers of school age children, the University Heights residential area is still a viable neighborhood. Therefore, the closure of University Heights in conjunction with the merger of its student body with that of Jefferson Park creates a new, integrated neighborhood, generating a school population which maximally utilizes Jefferson Park. This produces in Jefferson Park an ethnic ratio reflecting the residential population in the area roughly bounded by Fourth Avenue, Campbell, Grant and

Speedway. In order to accommodate this integrated neighborhood, children formerly attending Jefferson Park and residing east of Campbell and north of Grant are assigned to Cragin, and children living south of Grant and east of Campbell are assigned to Blenman. In addition to spatial considerations, these assignments permit these children to attend school without crossing either Grant or Campbell. With respect to both Roosevelt and University Heights, this plan eliminates the vestiges of Dunbar.

The Court did not identify any constitutional violation respecting the Jefferson Park and Cragin neighborhoods, so that the reassignment of the foothills children north of the Rillito (the former Jefferson Park children to Davidson and the former Cragin children to Whitmore)

cannot adversely affect either Cragin or Jefferson Park. Thus, this aspect of the plan adheres to the policy of conveniently located neighborhood schools as well as returning the pattern of student assignment to what it would have been absent the discriminatory actions. In both the restoration of the previous conditions as well as the elimination of the Dunbar vestiges, the District submits that this plan comports with, and satisfies the Court's order.

With respect to the two junior high schools identified by the Court, Spring and Safford, it was determined that Spring was a vestige of Dunbar with a continuing stigma as a school not attended by Anglos. The Court has ordered that all vestiges of Dunbar must be eliminated from the school system.

There were two apparent reasons for the Court's identification of Safford as a school requiring remediation. First, following the closing of Roskruge Junior High in 1972, some Roosevelt graduates were transported to Safford for junior high school. Since Roosevelt was a vestige of Dunbar, these students should presumably have been assigned to a school other than Safford which already had a substantial Black enrollment. This leads to the second reason for the Court's identification of Safford. In 1951, the residential area around Dunbar was partitioned among Spring and Safford Junior Highs. As shown by the Court's statistical findings, the Black student population at Safford has remained relatively constant since 1951. The effect at Safford of the state action

which caused the Black residential concentration around Dunbar does not appear to have diminished over the years.

By recommending the closing of Spring, the District removes root and branch the last remaining vestige of Dunbar. The assignment of students north of Speedway and east of the Santa Cruz removes the Roosevelt students from Safford and assigns them to Doolen, which the Court has suggested should have been done in 1972. This will improve the ethnic balance at Doolen. Former Spring students west of the Santa Cruz will go to Maxwell Junior High. The former Spring students south of Speedway, east of the Santa Cruz and west of Stone will go to Safford.

Safford will remain open pending the building of a new junior high school to

serve the Safford and Mansfeld attendance areas. Meanwhile, Safford Junior High will become a reserve and magnet school which should stabilize its enrollment. Parents will be intimately involved in the planning and location of this proposed junior high. This proposed action will require the approval of the Court in view of paragraphs 5 and 7 of its June 5, 1978 Order. In this instance as well, the plan proposed by the District involves the meeting of its legal obligations with maximum regard for the educational needs of the children affected. The District submits these plans in the belief that they comport with the constitutional mandates ordered by the Court.

In the packets of material which are submitted together with this memorandum,

and which are incorporated herein by reference, several items of information are presented for the Court's consideration in conjunction with the plan. These packets contain materials specifically relating to the various options developed and considered by the Board. Included within these materials are the following:

A. Packet A - Brichta, Manzo and Tully:

1. Options 1-4, including various of the advantages and disadvantages of each. Option 2 is the one which was chosen by the Board and is recommended to the Court.

2. A student transfer and transportation summary, showing that of those students in Option 2 which are moved to a school different than was

attended last year, 74% are Anglos and 26% are minority students.

3. A summary of faculty reassignment, showing that Option 2 will remove 7 teachers from Brichta, and add 3 to Manzo and 4 to Tully, for no net change in the number of teachers for this option.

4. A transportation analysis, which shows that Option 2 will not require any additional funds for transportation nor will any additional students be transported.

5. A non-transportation cost analysis shows that Option 2 will require an additional $1,600.00 in the 1978-79 school year in the food service area.

6. An educational analysis, focusing on any significant change in

program. Option 2 does not indicate any significant programmatic alterations.

7. A memorandum from the principal of Tully indicating the status of Tully as of June 9, 1978.

8. A memorandum from the principal of Manzo indicating that school's status as of June 7, 1978.

9. Three documents utilized by the School Board during their meetings with the parents at the three schools in June 12, 1978 (Manzo), June 18, 1978 (Tully) and June 28, 1978 (Brichta). These documents have various amounts of statistical information about these three schools.

B. Packet B - Roosevelt, University Heights, Jefferson Park and Cragin.

1. Options 1-7A as considered by the Board. The Board chose an amended

version of Option 3 (recommended by the administration) which, with the amendment, became identical to Option 2.

2. A student transfer and transportation summary showing that of those students going to a school different than they attended last year in Option 2 (Option 3 as amended), 49% are Anglo and 51% are minority.

3. A transportation analysis indicating a $49,900.00 transportation cost increase for the year 1978-79, since an additional 179 students need transportation.

4. An educational analysis indicating certain alterations which will need to be accommodated as a result of the reassignment of the students as indicated.

5. A faculty reassignment analysis which indicates, under Option 2, that Blenman will need 3 more teachers, Jefferson Park will need 4 more, Roosevelt will lose 6.5 (since it is closed), Roskruge will add 1, University Heights will lose all of its 8.5 teachers and Whitmore will add 4, for a net decrease of 3 teachers resulting from the reassignment of students pursuant to this Option.

6. Four documents used by the Board during the parent meetings held on June 13, 1978 (Cragin), June 14, 1978 (Roosevelt), June 26, 1978 (University Heights) and June 27, 1978 (Jefferson Park).

7. Two Memoranda dated April 19, 1978 and June 8, 1978 from the Roosevelt

principal which contain certain information about that school.

8. A proposal regarding the plan which was generated by the Jefferson Park faculty immediately after the Court's June 5, 1978 Order was announced.

9. A non-transportation cost analysis which shows that Option 2 (Option 3 as amended) will save the District a total of $209,900.00 during the 1978-79 school year (not taking into account $96,000.00 which would have been spent to re-roof University Heights as needed).

C. Packet C - Spring and Safford.

1. Options 1-5 as considered by the Board. Option 5 was generated by the Board at its meeting on July 12, 1978, and adopted for consideration by the Court.

2. A transportation analysis, indicating for the option chosen by the Board, that an additional 50 children may need to be transported (to Doolen), at a maximum additional annual cost of $5,000.00. The children from Manzo and Tully areas going to Maxwell were already bused to Spring.

3. A faculty reassignment analysis which indicates that Doolen will need 3 additional teachers and Maxwell 9, while Spring, which closes, loses all 16 of its teachers. No change at either Safford or Mansfeld is anticipated as a result of this option, so a net loss of 4 teachers is obtained.

4. An educational analysis which does not indicate any significant programmatic changes as a result of implementing Option 5.

5. A non-transportation cost analysis which shows that Option 5 will generate a $255,625.00 savings during the 1978-79 school year.

6. A July 6, 1978 memorandum concerning the cost of renovating the library at Safford, in the event that a substantial additional number of students should be assigned to that school. The cost would be $88,600.00.

7. Two documents utilized by the School Board during the parent meetings held at Spring (June 21, 1978) and Safford (June 22, 1978).

D. Packet D - Transcripts of Parent Meetings.

1. Transcripts of each of the meetings the Board held with the parents of children attending or to attend the 9 schools identified in its June 5, 1978

Order, and previously discussed in paragraphs A9, B6 and C7 of this memorandum. Most of these transcripts eliminate introductory remarks, and focus only on the comments, questions and concerns of the parents in attendance.

2. The transcript of a General Meeting, to which all members of the public were invited, which was held at Tucson High School on June 29, 1978. Again, only the comments, concerns and questions of the public have been transcribed.

3. Transcripts of meetings held simultaneously at 10 schools (Mansfeld Junior High being the addition) on the morning of July 8, 1978, at which time the various options pertaining to the school at which the meeting was held were presented and explained. Those in

attendance were invited to ask questions and have further input during these meetings. The options, as included within Packets A, B and C, but in a prior form, were available for review and use at the meetings.

4. On July 10, 1978, five meetings were held at the Tucson High School cafeteria, to explain to the general public the options which were available to the School Board for consideration. At the fifth meeting that day (the meetings were held at 9:00 and 11:00 a.m. and 1:30, 3:30 and 7:30 p.m.), the entire School Board was in attendance, although some of the members attended other sessions. Unfortunately, only the first and last meetings were well-enough attended to warrant and be subject to taping and transcription. The

intervening 3 meetings divided into small groups for special attention. Accordingly, transcripts of only the first and last of those meetings were available.

5. On July 11, 1978, the School Board held a public study meeting at which time each of the options pertaining to each of the nine schools identified by the Court were examined in detail by the Board. A transcript of that meeting was made and is included. The public attended that meeting, but no comments from the public were received.

E. Packet E - Miscellaneous Process Materials.

These materials generally review the process through which the School District has gone in examining the Court's June 5, 1978 Order, developing the options which

were presented to the Board and the continuous effort to involve and inform those persons most directly affected by any plan adopted by the Board and approved by the Court.

Two different mailings were made to parents of children in each of the 9 schools identified by the Court. The first mailing concerned the June meetings held in each of those schools, and the second mailing concerned the July meetings. The second mailing was followed by personal telephone calls from either the school's principal or secretary.

The District has also endeavored to involve in the process the teachers who may be affected by the plan. The first part of this effort was a meeting for these teachers which was held on June 12,

1978, 6 days after a meeting was held with District Central Administrative Staff and Principals of the 9 schools involved. The teachers were invited to all parent meetings in both June and July, as well as attending a special meeting for them on July 9, 1978, at which time the teachers were shown the options and had an opportunity to ask questions about them. A communication is being sent to them today keeping them abreast of the situation.

Within these materials are two memoranda respecting the District's concern for various practical problems which are certain to continue to arise. These relate to utilization of the ethnic transfer policy of the District, open-enrollment schools such as Hughes, and special transfer situations involving

working-mothers and children in their last year at a school when their parents move out of that school's attendance area. These concerns will need to be addressed by the Court.

Further included within this packet of materials is a review by the Deputy Superintendent, the Assistant Superintendents for Business, Community, Operations and Student Services, as well as the Director of Federal Liaison concerning the meetings held and efforts expended in developing the plan. These memoranda disclose, to a certain extent, the nature of the various inquiries made during the stages of Plan Development.

Lastly in this packet is a transcript of the official Board Action adopting the options which have been submitted to the Court for approval.

F. Packet F - Bus Routes and Information.

Contained within this packet is a memorandum respecting bus routes, both as to their stops and a narrative description of the routes. A map is provided for each of the Board Adopted Options showing the routes as they have been tentatively established.

G. Packet G - Additional Supportive Materials.

Included within this group of materials are documents which delineate and are supportive of the District's efforts which culminated in the Board's recommendations to the Court. These items are enumerated for reference as follows:

1. Summary enrollment information for the District's schools, both for the

date of June 7, 1978 and projections for the fall semester of the 1978-79 school year.

2. A group of documents summarizing, (a) the status of specially funded programs within the 9 schools for the coming year, (b) various instructional programs for those schools, (c) their library resources, and (d) the status of parent involvement within each school for the coming year.

3. Documents detailing the effects within the junior high schools of the implementation of any of the junior high or elementary options.

4. A summary memorandum indicating the proposed locations of self-contained Adaptive Education Classrooms.

5. Summary information regarding teacher placement as of June 27, 1978.

This status will change, depending upon the Court's action respecting the plan.

6. A July 13, 1978 memorandum which preliminarily addresses the in-service activities which the District will engage in to facilitate the smooth implementation of the plan approved by the Court.

7. Letters to the District from representatives of the University of Arizona and Pima College, signifying their respective interests in acquiring University Heights and Mansfeld as well as Roosevelt.

8. Copies of three documents which have been submitted to the School Board by interested citizens. These are being submitted to the Court for its review.

H. Packet H - Copies of Compliance Documents.

Included within these materials are all the District's Compliance documents which have been generated since the exhibits were filed for trial in the fall of 1976. An additional summary document is being produced to reflect the entire 1977-78 school year. As soon as it has been published, copies will be forwarded to all parties and filed with the Court for consideration. Within these documents are addressed the questions raised by Plaintiffs with respect to items to be included within the process leading up to adoption by the School Board of a plan.

Adoption of Plan.

It is respectfully requested that the Court, after hearing, approve the plan as adopted and recommended by the School Board. Thereafter, it is

suggested that the School District report twice annually the status of the plan to the Court. These reporting dates should be approximately 60 days after the close of each semester, i.e., in early March and early August. This reporting should only occur for the school years 1978-79 and 1979-80. This two-year period of time should allow the Court to carefully determine to what extent the School District has met its obligation as established in the June 5, 1978 Order. The first report should be filed on or before March 15, 1979, and subsequent reports filed as ordered by the Court.

RESPECTFULLY SUBMITTED this 17th day of July, 1978.

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RESPONDENT TUSD #1'S APPENDIX III

RELEVANT PORTIONS OF PAGES 56-8 OF TUSD #1'S BRIEF BEFORE THE NINTH CIRCUIT COURT OF APPEALS

(Describes benefits received by the class of Mexican-American students by reason of the Settlement)

* * *

Appellants' assertion that the Mexican-American class received nothing under the settlement except the "Spalding method" voluntary language class (Appellants' Brief p. 31) is clearly false. For instance, the Stipulation requires the School District to:

(a) Alter the student assignment patterns at Borton and Holladay Elementary Schools, both of which were predominantly Mexican-American, so as to reduce minority enrollment below 50 percent (Stipulation of Settlement, CR 610, p. 5997);

(b) Recommend a process for parent participation to examine the future student assignment patterns and educational specifications for Davis,

Drachman and Carrillo Elementary Schools, all of which were predominantly Mexican-American (Id.);

(c) Alter the student assignment patterns for Utterback Jr. High School, previously predominantly Mexican-American, to reduce minority enrollment to below 50 percent (Id.).

(d) Insure that the junior high school into which the graduates of Pueblo Gardens and Cavett Elementary Schools (both predominantly Mexican-American schools) matriculate does not exceed 50 percent minority student enrollment (CR 610, p. 5998);

(e) Adopt a non-discrimination in employment statement, and establish uniform procedures with respect to hiring, placement and promotion of District employees (CR 610, p. 5999);

(f) Develop and implement in-service training programs which were required of all District employees involved in implementing the Stipulation o Settlement (CR 610, p. 6000);

(g) Demonstrate good-faith efforts to insure that no student is discriminated against in the implementation of the District's uniform suspension and expulsion policy, and to obtain specific recommendations in this regard from Black and Mexican-American parents (Id.);

(h) Conduct a careful good-faith examination of testing instruments used by the Defendants to insure that no student is discriminated against in this aspect of the District's educational program (Id.);

(i) Institute a practice of not admitting a student to a bilingual instructional program without specific parental permission following an explanation to the student's parents of the nature of the program and the options available, including programs of standard English as a second dialect (e.g., B.A.S.E.) (Id.);

(j) Obtain external data to evaluate the bilingual instructional programs (CR 610, pp. 6000-1).

Numerous witnesses testifed on August 30 and 31 that the benefits resulting from many of the School District's obligations included within the Settlement would benefit Mexican-American as well as Black students. (See testimony of Dr. Driggs, Transcript Vol. IV, pp. 579-80); Dr.

Charles Ford, Transcript Vol. IV, pp. 587-9; Mildred Wilson, Transcript Vol. IV, pp. 605-6; Mrs. Sparks, Transcript Vol. IV, p. 618; Dr. Doris Ford, Transcript Vol. IV, p. 644; Dr. Tidwell, Transcript Vol. IV, p. 650; Anna Jolivet, Transcript Vol. IV, p. 680 and Dr. Charles Grubbs, Transcript Vol. IV, pp. 698-9).

The District agreed to review and revise, if appropriate, minority enrollment in at least five schools which were not found by the Court's June 5, 1978, Order to be operating unlawfully but which historically have been predominantly Mexican-American.

The Mexican-American class had very little to give to the Defendants in return. Negotiation of the settlement depended on the relative strengths and

weaknesses of the position of the Mendoza plaintiffs. The Court's June 5, 1978 Findings of Fact and Conclusions of Law reveal that the Mendoza plaintiffs had failed to prove almost all of their allegations. (See CR 208 at pp. 2355 (para. 25), 2432 (para. 77), 2454-5 (para 14), 2482-3 (para. 7), 2513 (para. 39), 2523 (para. 3), 2524 (para. 6), 2525 (para. 9-10), 2526-7 (para. 12), 2529-30 (para. 20), and 2548 (para. 49)). (See discussion supra, pp. 2-3). . . .

RESPONDENT TUSD #1'S APPENDIX IV

PORTION OF PAGE 60, TRANSCRIPT OF HEARING ON PENDING MOTIONS, AUGUST 7, 1978

STATEMENT OF MR. J. WM. BRAMMER, JR., COUNSEL FOR TUSD #1

* * *

MR. BRAMMER: All I've heard, Your Honor, is that people are opposed to the closing of schools. And if that's what we're talking about, this Court has identified tomorrow as the date with which the School District can present evidence and people can suggest alternatives to the Court concerning the plan, then the Court has established the date of the 24th of this month for people to appear after notice and pursuant to Rule 23 concerning any settlement which finally gets filed with this Court. . . .

* * *

RESPONDENT TUSD #1'S APPENDIX V

PORTION OF PAGES 145-6, TRANSCRIPT
OF HEARING ON PENDING MOTIONS,
AUGUST 7, 1978

STATEMENTS OF THE DISTRICT COURT
AND MR. ARMAND SALESE, COUNSEL
FOR PETITIONERS

* * *

MR. SALESE: Your Honor, I might suggest to the Court as to general positions and issues on the plan or plans, that the proper inquiry for cross examination is - - I think the Court has already set August the 24th for the time at which we deal with the plan, at least the school's plan.

THE COURT: Well, no, we've designated tomorrow morning to deal with the desegregation plan. We set August 24th for the time to deal with the proposal or the settlement of this lawsuit and an opportunity for the members of the class to be heard on the proposed settlement overall. . . .

* * *

RESPONDENT TUSD #1'S APPENDIX VI

PORTION OF PAGE 5, TRANSCRIPT OF PLAN HEARING, AUGUST 8-9, 1978

(Designated in record below as Hearing on Proposed Plan, Vol. I, pages 1-265, at 5)

STATEMENT OF THE DISTRICT COURT

* * *

THE COURT: Would you take the witness stand right over here, please, sir?

At the outset, I think the record should reflect that this is the time set for hearing on the defendants' proposed plan for desegregation pursuant to the Court's order. You may proceed.

* * *

RESPONDENT TUSD #1'S APPENDIX VII

PORTION OF PAGE 184, TRANSCRIPT OF PLAN HEARING, AUGUST 8-9, 1978

(Designated in record below as Hearing on Proposed Plan, Vol. I, pages 1-265, at 184)

STATEMENTS OF MR. DONALD PITT AND THE DISTRICT COURT

* * *

[MR. PITT]:....This is because if we close Mansfeld, which is outside of Judge Frey's order, we are going to now take the students over here at Safford and over here at Spring and put them in some new school. So what I am asking the Court to consider, in its wisdom, is that in looking at the stipulation and entering a final order in this matter --

THE COURT: Which, by the way, is not the scope or purpose of this hearing.

* * *

RESPONDENT TUSD #1'S APPENDIX VIII

PORTION OF PAGE 188, TRANSCRIPT
OF PLAN HEARING, AUGUST 8-9, 1978

(Designated in record below as Hearing
on Proposed Plan, Vol. I, pages 1-265,
at 188)

STATEMENTS OF THE DISTRICT COURT,
AND MESSRS. RUBIN SALTER, JR.,
COUNSEL FOR RESPONDENTS FISHER, ET AL.,
AND DONALD PITT

* * *

MR. PITT: I was just trying to find out what the intent of the stipulation was.

THE COURT: Well, perhaps they can give us both.

MR. SALTER: If he will come back on the 24th, Your Honor, we will define it for him.

THE COURT: And I think really that's the time when we should delve into that matter. What we're concerned with here now is Option Five. . . .

* * *

RESPONDENT TUSD #1'S APPENDIX IX

PORTION OF PAGES 286-7, TRANSCRIPT
OF PLAN HEARING, AUGUST 8-9, 1978

(Designated in record below as Hearing
on Proposed Plan, Vol. II, pages 266-455
at 286-7)

STATEMENTS OF TOBY ENGLER AND
THE DISTRICT COURT

* * *

MRS. ENGLER: Okay. I think I've stated some of my objections.

The other thing I wanted to know is that, wouldn't it be just as valid, since both Safford and Spring are named in the Court order as having vestiges of segregative intent, and Mr. Brammer has told me that Mansfeld is being considered as part of a long-range remedy, wouldn't the wording of paragraph number five in this document --

THE COURT: Well, if you are talking about the settlement document now, we'll get into that matter in another hearing. What we are concerned with here is only insofar as it may relate to Option Five.

* * *

RESPONDENT TUSD #1'S APPENDIX X

PORTION OF PAGES 580, 587-9, 606, 618, 650, 680, AND 698, TRANSCRIPT OF SETTLEMENT HEARING, AUGUST 30-31, 1978

(Designated in the record below as Hearing on Proposed Plan, Vol. IV, pages 473-783, at 580, 587-9, 606, 618, 650, 680 and 698).

STATEMENTS OF ARMAND SALESE, COUNSEL FOR PETITIONERS, DONALD DIGGS, MORRIS BALLER AND MICHAEL ZAVALA, COUNSEL FOR RESPONDENTS MENDOZA, ET AL., CHARLES FORD, THE DISTRICT COURT, MILDRED WILSON, RUBIN SALTER, JR., COUNSEL FOR RESPONDENTS FISHER, ET AL., VERTIE SPARKS, CLYDE TIDWELL, ANNA JOLIVET, J. WM. BRAMMER, JR., COUNSEL FOR RESPONDENT TUSD #1, DR. CHARLES GRUBBS,

* * *

[p. 580]

BY MR. SALESE:

Q. Doctor, the programmatic changes that you reviewed for Mr. Salter, and upon which you have commented, those are for Black students in Tucson School District Number 1; are they not?

[DR. DIGGS]

A. Those changes would benefit all students.

Q. But do you know whether or not those changes are envisioned for Black and Mexican-American students or just Black students?

A. I think they are envisioned for all students.

Q. So that the portion of the settlement is to include and to be utilized for Mexican-American students also?

A. Students, period.

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* * *

[pp. 587-9]

BY MR. BALLER:

Q. Dr. Ford, do you believe that the implementation of the programmatic recommendations would work to the benefit of Mexican-American students as well as Black students?

[DR. FORD]

A. Having not done the research with Mexican-American children, I would say probably; I would say probably.

Q. You did say that in formulating those recommendations I believe you told Mr. Salter that you were concerned with improving the education for all students?

A. That's correct.

MR. BALLER: Thank you. No further questions.

THE COURT: Mr. Salese? Before Mr. Salese asks you any questions, in connection with Mr. Baller's last question, do you feel that any of these programs that are recommended as part of the settlement on behalf of the Black children would have an adverse effect on Mexican-American children in any way?

THE WITNESS: Your Honor, no, we felt that the programs that we had proposed are based in sound educational practices.

THE COURT: Very well. Thank you. Mr. Salese?

MR. SALESE: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. SALESE:

Q. Sir, the programs that your

organization prepared and researched, and what you've testified about, they were designed primarily for Black students; isn't that correct?

A. That's correct.

Q. And that the research and the data used to support or to select alternative methods of increasing the ability of Black students to compete and to get a better education, that has foundation with Black students? In other words, you were studying the performance of Black children in other programs where they've been involved and have done well, et cetera, in terms of determining what programs you would include in this recommendation to the Court?

A. I will answer that question with qualifications.

Q. Now - - Pardon me.

A. Having worked both with Mexican-American children, as well as Black children, I feel that in my professional judgment, it would be that some of those, since these programs are founded in sound educational practices as they relate to minority children, I would think that these programs should work for Mexican-American children also.

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[p. 606]

[BY MR. SALTER]

Q. And as a Black and as a teacher, would you recommend this program as a viable one to assist Black children - - well, Black and all children in achieving a better quality of education?

[MS. WILSON]

A. I very highly recommend it.

Q. Now, this program will work for Mexican-Americans, in your opinion, as well?

A. Yes.

Q. And you know it works for Anglos as well?

A. Yes.

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[p. 618]

BY MR. BALLER:

Q. Mrs. Sparks, in your work, have you worked with substantial numbers of Mexican-Americans as well as Blacks?

[MRS. SPARKS]

A. Yes, I have.

Q. And is it your feeling that the recommendations made by the Coalition, if they were implemented, would benefit Mexican-Americans as well as Blacks?

A. I do believe.

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[p. 650]

BY MR. ZAVALA:

Q. Dr. Tidwell, are you familiar with the District's new formal policy with respect to expulsions and suspensions?

[DR. TIDWELL]

A. Yes.

Q. Does that policy apply only to a Black or every child in the District?

A. Every child in the District.

* * *

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* * *

[p. 680]

[BY MR. SALTER]

Q. And you have heard of a document entitled Programmatic Recommendations to Improve the Quality of the Education for Black Children; have you not?

[DR. JOLIVET]

A. Yes, I have.

Q. And as a professional educator, as a Black, do you believe that with the implementation of that program, it will improve the quality of education for, not only Black children, but all children within the District?

A. Yes.

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[p. 698]

[MR. BRAMMER]

Q. Anywhere within those policies, or within the policies of the administrative regulations, or the guidelines, Dr. Grubbs, is there any distinction made between types of pupils based upon their race or ethnicity?

[DR. GRUBBS]

A. No, there is no distinction whatsoever.

Q. Those guidelines and regulations and Board policies are directed toward District students, whatever their race or ethnicity; is that right?

A. That is true.

RESPONDENT TUSD #1'S APPENDIX XI

PORTION OF PAGES 480-1, TRANSCRIPT
OF SETTLEMENT HEARING,
AUGUST 30-31, 1978

(Designated in the record below as
Hearing on Proposed Plan, Vol. IV,
pages 473-783, at 480-1)

STATEMENTS OF THE DISTRICT COURT AND MR.
ARMAND SALESE, COUNSEL FOR PETITIONERS

* * *

THE COURT: Well, let me disabuse your mind and cut this short. The Court has already ruled on that matter, and I'm not going to relitigate - - I'm not going to hear any more argument on it. So with respect to that, the Court has already heard and ruled upon that so don't dredge that up again. You've made your record on it and you are free to pursue your remedy on that matter. You are just wasting time now plowing that ground again.

MR. SALESE: Well, Your Honor, the problem I have - -

THE COURT: The problem you have is that you cannot seem to accept the fact that the ruling has been made on the desegregation plan. What we're concerned with now, and only with now is the

settlement. Now, the fact that the settlement, in essence, adopts the Court's plan, that is of no consequence, really, insofar as the settlement is concerned. The Court independently made that determination. Now, if counsel want to accept it, that's fine; if they don't their remedy is to go to the Court of appeals.

MR. SALESE: So as I understand it then from Your Honor, then the closure issue, the plans submitted are not part of the settlement?

THE COURT: The closure, insofar as the Court's order of desegregation is concerned, is not in issue.

* * *

RESPONDENT TUSD #1'S APPENDIX XII

PORTION OF PAGES 489-91, TRANSCRIPT
OF SETTLEMENT HEARING,
AUGUST 30-31, 1978

(Designated in the record below as
Hearing on Proposed Plan, Vol. IV,
pages 473-783, at 489-91)

STATEMENT OF THE DISTRICT COURT

* * *

[THE COURT]

. . . .As counsel have indicated, this case has gone on for a long time. All the main counsel in the case and the Court have been living with this case. We all considered literally thousands upon thousands of pages of testimony, depositions, exhibits in this case. We have a whole room full of evidence that was presented in this case. It took Court and counsel a couple of years to collate and to consider all of that matter. And with the cursory examination, it should have been apparent that Count One of the plaintiffs in the Mendoza case, 74-204, was the crux of the complaint. Count One was the count that alleged the creation and maintenance of a tri-ethnic segregated system. Counts

Two, Three, Four, Five, Six and Seven and Eight were merely adjuncts thrown in to support Count One.

Now, the Court and counsel recognize this, that these matters weren't separate counts, weren't separate items to be litigated separate and apart from the main issue of discrimination or segregation, but that they were valid issues to be considered and valid issues on which evidence should be presented with respect to the main issue in the case, to-wit: Discrimination and segregation. And to illustrate, Count Two alleged discriminatory tracking of students. Evidence was presented on that matter, substantial evidence.

Count Three: Inferior curricula and facilities for minorities. Again, substantial evidence was presented and

the issue was tried. And to say now that those issues should be relitigated is, as I say, either a smoke screen or borne from lack of information about what was tried in this case.

Count Four: Discrimination in the hot lunch program. Again, that was considered. Failure to properly take into account linguistic differences. Substantial evidence was presented. Lack of bilingual notices. Again, and there is a ruling with respect to such matters, a finding.

Count Eight: Failure to employ and promote Chicano staff. Again, a ruling on that matter. There is no one in this case with standing to raise that issue except insofar as it goes to discriminatory intent, segregative intent. It's in the record. And to say

that anyone is being deprived, or has been deprived of any opportunity to present evidence in this case is a sheer misstatement, that is, in view of the tremendous nature of the, and quantity of the evidence that was presented and considered. And at this late date, to say there wasn't sufficient evidence presented, and I dare say you'll find any case, or none that I can think of that I read, where the evidence was as substantial as the evidence was in this case, where counsel worked harder to marshall their evidence and present everything that could be obtained which might reasonably bear on the issues that were before the Court. . . .

* * *

RESPONDENT TUSD #1'S APPENDIX XIII

PORTION OF PAGES 739-40, TRANSCRIPT
OF SETTLEMENT HEARING
AUGUST 30-31, 1978

(Designated in the record below as
Hearing on Proposed Plan, Vol. IV,
pages 473-783, at 739-40)

STATEMENTS OF MESSRS. WILLIAM J. MALEDON,
EDMUND KAHN, J. WM. BRAMMER, JR., ARMAND
SALESE, AND THE DISTRICT COURT

* * *

MR. MALEDON: Your Honor, we just have one other brief matter.

Your Honor, paragraph 26 of the stipulation of settlement provides that the plaintiffs shall submit documentation relating to the attorneys' time and expenses that's been put in in connection with this litigation. And in order to comply with that paragraph, Your Honor, and also for the edification of the members of the class and for the Court, I have here, Your Honor, which I'd like to have marked, and which I would offer into evidence as Exhibit One, copies of the time records of all of the plaintiffs' lawyers involved in the litigation; also I have copies of the expense records of all of the plaintiffs' lawyers involved in the litigation. They are all in that

one folder. I would simply point out to the Court that those documents disclose approximately 11,000 hours of attorney and law clerk time on behalf of all of the plaintiffs' attorneys, and in excess of $153,000 of direct out-of-pocket expenses since the inception of the litigation incurred by our firm, Mr. Salter, Mr. Zavala and Mr. Baller.

We have nothing further, Your Honor, unless the Court has any questions with respect to that exhibit.

Thank you, Your Honor.

THE COURT: Any objection to marking the exhibit into evidence, gentlemen?

MR. KAHN: No objection, Your Honor.

MR. BRAMMER: No, Your Honor.

MR. SALESE: Your Honor, we have no objection. I think our objection with respect to attorneys' fees is raised in my memorandum.

THE COURT: It goes to the settlement in general.

MR. SALESE: Right.

THE COURT: And the inclusion into the settlement of this matter.

MR. SALESE: Right, not to the validity of the amounts or the costs.

THE COURT: Very well. Thank you. The Plaintiffs' Exhibit Four may be marked in evidence.

Mr. Maledon, your representation as to the hours shown in that exhibit appear to be in keeping with some of my earlier comments here today. The time and effort expended on this case, as I stated earlier, have been fantastic. It doesn't appear that any stone has been unturned.

* * *

RESPONDENT TUSD #1'S APPENDIX XIV

ERRATA TO PETITIONER'S APPENDIX

Some errors have been discovered in the Appendix submitted by Petitioners. Numerous misspellings were apparent, but will not be corrected unless the context requires. Reference will be made to the Appendix' page and line or item number, followed by the correction.

1. p. ii, item U. ". . . July 26 . . . ."

2. p. 10, l. 12, ". . . employee training, and in policies on testing . . . ."

3. p. 22, following L. 4 ending in ". . . purpose of . . . ." should be inserted ". . . the Plan Hearing (August 8th and 9th) and the status of . . . ."

4. p. 22, l. 13, ". . . 11th Order, what was and was not decided by the August 11th Order . . . ."

5. p. 37, l. 12, ". . . fore the Court, we must ask whether the trial

court had sufficient facts before . . . ."

6. p. 83, 2nd and 3rd lines from bottom should read: "The school attendance areas for Manzo and Tully remain unchanged."

7. p. 84, l. 1, ". . . students would remain very heavily minority . . . ."

8. p. 94, last line, ". . . Safford, partly to Doolen, and partly to Mansfeld."

9. p. 122, l. 4, ". . . F.2d 799 (3rd Cir. 1974), cert. denied . . . ."

10. p. 127, subparagraph 1, lines 4 and 5 should read ". . . approved by all parties, and stipulation of dismissal with prejudice Counts 2, 3, 4, 5, 6, and 7 of the Amended Complaint of the Plaintiffs Mendoza, et al., which has

been signed by all parties who have appeared in this action."

11. p. 143, l. 4, ". . . federal court from the terms of this stipu-. . . ."

12. p. 153, 1st line of salutation, "To: The Parents, Guardians and/or Next . . . ."

13. p. 159, 2nd line from bottom, ". . . 1978-79 school year through a process . . . ."

14. p. 173, 1st line of pleading title should be: "Joint Motion of Plaintiffs, ..."

15. p. 179, additional places appear for signature of counsel for Defendants-Intervenors Sutton, et al., and for Plaintiff Alberto Sanchez, individually. The signatures of these

counsel do not appear on and were not affixed to the original document.

16. p. 196, 3rd line from bottom, ". . . 1978, by me, on behalf of my clients, to the Court pursuant to its Order of June 5, 1978. These elements, ..."

17. p. 199, subparagraph D.2:

a) l. 1, "That on or before July 1, 1983, ..."

b) l. 3, ". . . theretofore complied with the lawful orders entered in the above captioned causes and have complied with the . . . ."

18. p. 203, l. 1, ". . . school year" (this subparagraph ends here).

19. p. 214, l. 18, ". . . respect to our requested changes to your . . . ."

20. p. 221:

a) 1. 4, ". . . paragraphs which were not changed from the original, and certain paragraphs which were changed by the . . . ."

b) 3rd line of subparagraph 1, ". . . tion of the original July 13, 1978 . . . ."

21. p. 231 should be p. 232, preceding p. 233.

22. p. 232 should be p. 231, following p. 230.

23. p. 234, subparagraph 10, l. 7, ". . . be admitted to such a program . . . ."

OVERSIZE FOLDOUT(S) FOUND HERE IN THE PRINTED EDITION OF THIS VOLUME ARE FOUND FOLLOWING THE LAST PAGE OF TEXT IN THIS MICROFICHE EDITION

SEE FOLDOUT NO. 1 - 4